IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.794 of 2007

M. Selvam @ Alva Selvam .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition & Excise Department
   Fort St. George, Chennai 600009.

2. The Commissioner of Police
   Coimbatore City
   Coimbatore. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus directing the respondents to produce the detenu Viz. M.Selvam @ Alva Selvam, son of Mandira Nadar @ Murthy, who is now detained in Central Prison, Coimbatore in pursuance of the order of the 2nd Respondent on 31.1.207 in C.No.05/G/IS/2007 before this Court, cal for records, set aside the order and set the detenu at liberty forthwith.

For Petitioner : Mr.S.Swamidoss Manokaran
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner calls in question legality of the order of detention 31.1.2007 passed by the second respondent ordering his detention under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982 (in short "the Act") branding him as a "Goonda".

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2. The order of detention dated 31.1.2007 was passed on the basis of ground case in Crime No.33 of 2007 for alleged commission of offences under Sections 341, 392 and 506(ii) of I.P.C. The allegation against the detenu was that on 8.1.2007 at about 13.30 hours, when one Jayaram was returning home after attending to his work, near City Cake Shop, Eru Company, Mettupalayam Road, the detenu and two others pushed down Jayaram and the detenu brandished a knife and threatened him to part with the money. One of the associates forcibly took away Rs.250/- from the pant pocket of Jayaram. Jayaram raised hue and cry. The public nearby tried to apprehend them on the spot, but the detenu and his associates threatened them at the point of knife. The public ran to safer places out of fear of danger to their lives and properties, and thus the detenu and his associate created terror and panic at the spot. The detenu was arrested on 19.1.2007.

3. The second respondent, taking note of the above case as a ground case and finding that there are four adverse cases pending against the detenu in Crime Nos.1329, 1330 and 1336 of 2004 on the file of B11 Saibaba Colony Police Station for the offence punishable under Section 379 IPC and Crime No.28 of 2007 on the file of B11 Saibaba Colony Police Station for the offence punishable under Section 302 IPC and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. Since Mr.S.Swamidoss Manokaran, learned counsel for the petitioner challenges the impugned order of detention dated 31.1.2007 mainly on the ground of delay in considering the representation dated 26.5.2007 made on behalf of the detenu, we do not propose to go into the other aspects of the case. According to the learned counsel for the petitioner, there was a delay in considering the representation by the Minister concerned, which vitiates the order of detention.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

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5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. In the case on hand, the impugned order of detention came to be passed on 31.1.2007. A representation was made to the detaining authority on 26.5.2007 and the detaining authority received the same on 31.5.2007. After calling for parawar remarks from the Sponsoring Authority, a report was sent to the Government on 8.6.2007. The file was circulated on 14.6.2007. The Under Secretary and the Additional Secretary dealt with the file on 15.6.2007. But, the file was considered by the Minister concerned only on 21.6.2007 and ultimately the representation was rejected on the same day itself i.e. on 21.6.2007. Even though the Under Secretary and the Additional Secretary dealt with the file on 15.6.2007, the Minister concerned dealt with the file only on 21.6.2007. The delay in considering the representation by the Minister concerned, viz., between 15.6.2007 and 21.6.2007 - a period of six days, was highlighted by the learned counsel for the petitioner. Even though 16.6.2007 and 17.6.2007 happened to be public holidays, there is no convincing reply on behalf of the State for the delay in considering the representation by the Minister concerned. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed for four days (excluding Saturday and Sunday), between 15.6.2007 and 21.6.2007. There

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is absolutely no explanation for this delay.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, there is a delay of four days in considering the representation, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition. The order of detention dated 31.1.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To:

1. The Secretary to Government,
   State of Tamil Nadu,
   Prohibition & Excise Department,
   Fort St. George,
   Chennai 600009.

2. The Commissioner of Police
   Coimbatore City
   Coimbatore.

3. The Superintendent,
   Central Prison,
   Coimbatore.

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary,
Government of Tamil Nadu,
Public [Law and Order]
Fort St. George, Chennai 9.

+ 1 CC To Mr. S.Swamidoss Manokaran, Advocate SR NO.58328

H.C.P.No.794 of 2007

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